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ABSTRACT

Noting that considerable research has been conducted in the area of political communication, this paper points out that little attention has been given to direct legislation techniques--means by which citizens participate in the legislative decision making process. To establish a rationale for the study of direct legislation efforts, the paper explores four topics: (1) the role of direct legislation in a participatory democracy; (2) the types, frequency, and uses of direct legislation; (3) arguments for and against direct legislation; and (4) related issues and concerns. The paper concludes that direct legislation campaigns are segments in the pattern of political development of the United States and deserve careful study. Tables setting forth provisions for direct legislation in each state are included. (FL)

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DIRECT LEGISLATION CAMPAIGNS AND PARAPOLITICAL ORGANIZATIONS: A CASE FOR COMMUNICATIONS ANALYSIS

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PREFACE

This author's interest in direct legislation is a product of research initially conducted for his dissertation at Southern Illinois University in the late sixties. Focus of that research was on the prohibition repeal campaign conducted in Oklahoma during 1958-59. Prohibition was a constitutional provision and had been voted on six times prior to 1959. Oklahoma became the next to the last state to legalize the sale of liquor. Liquor by the drink incidentally is still illegal and made possible only by liberal interpretation of the law.

Direct Legislation Campaigns and Parapolitical Organizations: A Case For Communications Analysis

During the past decade, there has been a clear resurgence in the use of direct legislation techniques at both the local and state levels. Perhaps nothing in recent history has done more to rekindle the spirits of the proponents of participatory democracy than California's Proposition 13 in 1978. Many campaign theorists and political analysts believe that no other campaign in which the voter has been directly responsible in the decision-making process, since repeal of prohibition, has had such a profound impact on the contemporary political scene.

There has been considerable research conducted over the past three or four decades in the area of political communication. One certainly cannot be critical of either the methods employed nor the products of those studies. Yet in a review of the literature, one must conclude that the vast majority of research has been oriented to one of three directions: explanations of campaign results with principal focus on candidates and thus candidate-issue oriented; impacts of media on election results; or the examination of sociological, psychological and political correlates of human behavior. It is also true that there has been considerable research and attention paid to movements, both social and historical, as rhetorical phenomena. However, one void is evident--the absence of attention by the communications discipline to direct legislation techniques which have become commonplace during the seventies and eighties. As a case in point, a review of the Sanders and Nimmo landmark volume on political communication[1] treats public policy, but does not address direct legislation. Direct legislation studies are significant, for when the citizency decides to make a fundamental alteration in constitutional law or in the area of public policy, it is important

and meaningful to trace and understand the manner in which the change came about. Additionally, as a result of such research, the discipline can learn more about the strategies and impacts of communications in that context, thus increasing the corpus body of knowledge and how one might communicate more effectively with others.

The purpose of this paper is to establish a rationale for the investigation of direct legislation efforts, past and future. Four topics will be explored: first, a rationale for direct legislation in a participatory democracy; second, types, frequency and uses of direct legislation; third, some arguments for and against direct legislation; and fourth; a discussion of some of the issues and concerns related to the study of direct legislation. First, then, let us examine briefly the rationale for a participatory democracy.

Participatory Democracy

The distinctiveness of a democracy is that the citizenry can choose and change government. The role of the collective electorate is to change, by election, its leadership and representation, and to express views regarding issues on which it feels strongly. Most Americans have been taught and have come to believe by adulthood, that in order for democracy to flourish, it is essential for the citizens to be interested in, informed about and active in politics. If democracy is interpreted as rule by the people, then the question of who participates in political decisions becomes the question of the nature of democracy in a society. How much participation is there in the political process? How concentrated is the participation? Recent empirical studies of political participation using survey techniques have amassed a considerable body of information on the level and distribution of

political participation--a picture of low levels of citizen participation and the concentration of political activity in the hands of a small portion of the electorate.

Proponents of participatory democracy argue that if democracy is going to be rule "of the people, by the people, and for the people"; the people must be interested and active--i.e., a societal norm proclaiming a duty for all citizens to be interested, informed and active participants. ENTER DIRECT LEGISLATION.

Direct Legislation-Types/Frequency/Uses

Direct legislation may be defined in its broadest generic sense as those means available which provide for the citizen's collective judgment in the policy-making process. Most all parlimentary forms of government and organizations afford the opportunity for participation in policy making via one or more methods. It must be noted that there are several different species of direct legislation and that they vary from one another mainly in the degree to which they accommodate voter participation. Further, their utilization varies dependent upon provisions of state or local law. Types of direct legislation are basically two in number:

1) Referendum--a means by which the citizenry can pass upon measures initiated by legislative bodies; i.e., to ratify or reject public policy before its implemented. There are four sub-types:
    a) Referendum Initiatives--whereby a petition is submitted by the people.
    b) Legislative referendum--whereby the legislature voluntarily submits laws for approval.
    c) Constitutional requirement--whereby the state constitution may require certain questions to be submitted to the people.
    d) Advisory referendum--a non-binding sentiment of public opinion supposedly helping to guide a legislature's decision making.

2) Initiative--a means by which the citizenry can via petition initiate legislation. There are two sub-types:

a) Direct initiative--whereby a proposed measure is placed on the ballot for approval without regard or need of legislative action.
b) Indirect initiative--whereby a proposed measure is placed on the ballot for approval, within a reasonable period, after legislative action.

The utilization of the initiative and the referendum as means of making policy decisions have a long history. Direct legislation are institutions of Swiss lineage, their history almost as old as American democracy itself.[2] The referendum was frequently used in colonial times, the first in Plymouth Colony in 1636, and the initiative as early as the third year of the Revolutionary War. One of the lost episodes in direct legislation history was a last minute effort to overt civil war. On January 3, 1861, Senator Crittenden of Kentucky offered the senate a resolution providing for a national referendum to "take the sense of the people on those disputes that now disturb the peace of the country and threaten the existence of the union."[3] Following the debate, the proposal for a national referendum was defeated in the Senate by one vote.[4] Proponents of direct legislation often muse as to whether civil war might have been avoided if only. . .

At the beginning of the 20th century, the Progressive Reform Movement was preoccupied with one central problem--corruption of the political system. To secure their goals, the Progressives advocated a wide range of reform measures including the initiative, referendum and the recall. The basic strategy of these reforms was to check and control established political institutions by placing the ultimate decision-making power of policy decisions in the hands of the electorate. Initially instilled principally in the southern and western portion of the country, the impact of the progressive success in direct legislation can today be characterized as a western phenomena.

Table I indicates those states which currently have, in force, direct legislation provisions. At present, only thirty-one states have provisions. All thirty-one provide for referendum and twenty-one also have provisions for the initiative. Six provide only for referendum in the case of constitutional amendment. Table II indicates the states by region. Readily one sees that twenty-nine are heartland, western and southern states--in fact twenty are west of the Mississippi River.

The actual utilization of direct legislation varies rather significantly dependent on state laws. State laws have also changed rather dramatically through the years, thus encouraging and/or discouraging the use of direct legislation measures. Kansas, Oklahoma and Kentucky, for example, have prohibitions by constitutional law which require voter approval prior to enactment of a new law. Rhode Island's constitution calls for all bonding over $500,000 to require voter approval. Public policy decisions in Massachusetts provide for non-binding sentiment to be sought. And Vermont, though no law of any type in this area, nonetheless in 1977 saw the legislature send issues to the voter.[5]

No recent study has been conducted which summarizes the frequency of use of direct legislation or the range of issues which have been submitted for voter consideration. However, for the period 1898-1976, a comprehensive research summary indicates that 1,224 initiatives and referendums had been proposed, of which 449 were approved. The most prolific users were Oregon (287) California (159) North Dakota (137).[6] Incidentally, the initiative is the most popular direct legislation technique.[7] Proposition 13, the infamous 1978 initiative which rolled back property taxes in California was perhaps the headliner initiative of the last decade. Time characterized the renewal of interest in direct legislation by claiming, "Not since the 1930's,

when the Depression brought a spate of voter initiatives to the ballot, have citizens proposed so many new laws--and limits for government."[8]

In November of 1980, eighteen states and the District of Columbia put a total of forty-two measures on the ballot including: tax cutting proposals in Arizona, California, Massachusetts, Michigan, Missouri, Ohio, Oregon, South Dakota and Utah; a nuclear energy ban in Missouri; a bilinqualism proposal in Florida; an anti-smoking ban in California; repeal of the beverage container deposit law in Maine; and an eight year ban on the hunting on mourning doves in South Dakota.[9] The range of issues which have been placed on the ballot or are destined for future ballots run the gauntlet from abortion, sunshine laws, county-option on liquor, gambling, bingo, horse racing, lotteries, civil rights of professed homosexuals and gun control to name only a few. Though direct legislation has traditionally been the purview of the states, the likelihood of a national referendum has even been given some lipservice. Nuclear energy, ERA and gun control have all been mentioned prominently as possible national referendum possibilities. In 1978, Senator Charles Grassley of Iowa echoed the sentiments of many when he advocated a national referendum system at the national level. Said Grassley,

> I favor the initiative on the federal level because we pride ourselves on being a participatory democracy and that would further extend the principal of citizen participation in government...it further extends the principles of our system of checks and balances...and would serve as a means of waking up elected officials in this country to the true feelings of the electorate in the extent they want government spending to dominate their lives.[10]

Whether utilized at the state or national level, direct legislation provisions accommodate electoral impact on domestic issues in the legislative life of the nation--questions dealing with health, education, welfare, environmental protection, housing, civil rights, public works, social issues and related internal affairs. California's

reputation as a pace setter and recent experience has served to signal a substantial revival in the use of those techniques.

Direct Legislation - Pro and Con

There seems to be no conventional wisdom regarding the use of direct legislation. Historically, there is evidence of its use and recent activity seems to attest to the persuasive influence it can have on the affairs of a state or nation.

Proponents argue that the use of the initiative and referendum provides a means to make public opinion work, to make government more accountable, to create local autonomy and foster self-rule, and to initiate policy. The bottom line, say the advocates, is that when citizens have a vested interest in the outcome of an action, one can reasonably expect greater participation in the political process and satisfaction with the product.

Opponents, on the other hand, argue that state legislators/local governments are the repository of the residual process of the people, that direct legislation is a dilution of legislative power, and that in the eighties, as an executive-centered world, decision making should reside in those who are elected to represent us. Further, claim opponents, direct democracy is clumsy at best, and that the people en masse are not well qualified for the function of lawmaking nor able to sustain the persuasive efforts of high pressure groups.

Regardless of how one might view direct legislation, there is evidence that voters today are disgruntled with legislative inaction and compromise and have seen positive results which have been achieved by well organized citizen activism. Direct legislation has become deeply rooted in the political culture of many states and is worthy of the attention of communications research.

Communications-Issues-Concerns

In an historical perspective, the study of politics and that of communications have been considered unitary, in that both are intrinsically bound in a concern for man as he functions in relation to the social processes. Communications by their very nature are employed with the explicit purpose of changing or reinforcing opinion and behavior. The classical concept of democracy, where communication flows in a circular fashion in and among the citizenry where dialectic, debate, public criticism and finally decision takes place, is characteristic and definitive of the political campaign whether it be candidate or policy oriented. Political activity, by its very nature brings about essential differences in outlook and understanding between opposing forces, whether it be possessors of political office and aspirants for office, the governing body and those they govern, or organized interests opposed on social, political or economic issues. Such differences are legitimately of concern because they are the integral components which cause individuals to interact on issues and make decisions at the ballot box.

The large scale changes that take place in society cannot be properly grasped unless one has some idea as to the way in which men work together in institutional patterns, the way in which organizations are made to yield human values, and the relationship to the behavior of the individual whose conflicts, interactions and transactions make up the greater whole--collective behavior. "A study in politics," says Heinz Eulan, a political scientist at Stanford,

> which leaves man out of its equations is a rather barren politics. Yet such is the propensity of man. The simple question--Why do people behave politically as they do? . . . seems to have explosive consequences for the study of man.[11]

The heart of government is public policy and its lifeblood is the policy making process. Policy originates and finds its expression in the actions of interested groups. Organized interests constitute elements in the total political system and play significant roles in the political process as a whole. Communication serves the organized interests in the extension of their advocacy to the citizenry. The function of communication, by its very nature, is social in that it helps society maintain the necessary concensus on how it is going to live. Communications, in shaping policy, is vitalized in the interplay between individuals within their culture and the interaction, a direct result of interiorized values which, when vocalized, provides the opportunity to seek alignment with individuals holding similar values. The instillation of values, the reinforcement or alteration thereof are important functions of communication. On the reverse side of the coin is the concern of rhetorical criticism, i.e., how the values were instilled, reinforced or changed so that a favorable reaction would evolve.

Referendum and initiative campaigns provide a natural, if not unique setting for such investigations. They thrive on dialectic; create their own tension; provide a forum to view the actions of the individual, the parapolitical organization, the mass media and the elected official; define the systematic agenda of community concerns and the formal agenda of government. In short, they provide an excellent basis to view the dynamics of policy making. Communication is not incidental, rather the essence as both a process and a product. The ongoing process of communication and feedback makes up the substance of what direct legislation campaigns are all about. Direct legislation campaigns are a fascinating forum featuring an

immense and diverse range of political activities as well as a ready-made laboratory. Research of the last decade has indicated a departure from the conclusions drawn in similar research during the classic campaign studies of the 1940's and 1950's. And, research conducted in the tradition of candidate-issues and mass media impacts are quite different from those dealing with issues. Relatively little attention has been given to exploring its role.

Though the mass media, political parties and traditional political campaign forces serve a strong role in the opinion to policy linkage, there are differences. The principal difference rests in the utilization of parapolitical organizations. The parapolitical organization is a voluntary pressure group which is not political in the traditional sense, but can and does perform political functions.[12] Given concern for an issue, the parapolitical organization is borne in response to a felt need. Generally, it arises for the explicit purpose of articulating a position on the issue being addressed. Singular in their purpose, these groups gain entry into the arena without being identified or having desire to be identified with any existing established political organization. The nature of the issue in large measure establishes the nature of the organization in terms of structure, membership and focus. Peculiar to direct legislation campaigns is the fact that the political communications are largely determined by forces outside the influence of the traditional body politic. The issue-oriented campaign more often than not will also cut accross traditional party allegiences, thus preventing effective party response.

Membership in the parapolitical organization as noted, is usually non-partisan, consisting of those individuals and organizations (religious, business, financial or pressure) which seek union out of

common concern, purposes or objectives. Membership may also be a product of various motivating factors--the common bond being agreement on how the ballot ought to be cast. The end result often finds strange bedfellows. For example, in the 1959 repeal of Prohibition campaign in Oklahoma, beer companies, bootleggers and members of the protestant clergy and church membership were all found among the prohibition camp (United Drys). Each had different motives for opposing prohibition repeal--yet found themselves side by side on the battle lines. In terms of participation in the campaign, one will usually note more representative participation, but not necessarily more participation. Though in the latter regard, the stronger the vested interest or the more intense the campaign, the more likely there is of broader participation and higher voter turnout.

Unlike more traditional campaigns where candidates have platforms which are made up of promises, direct legislation campaigns focus on issues where the emphasis is usually on pro or con, or the comparative advantage which may be accrued as a result of a policy decision. Thus, the issue campaign is more prone to involve personalities of lesser known reputation or perhaps no reputation at all; involve more grassroots" oriented argumentation with emphases on emotional and moral appeals; and focused closer to the value structure of the voters. Interestingly, the issue seems to become tantamount with the speaker and his/her credibility of considerably lesser concern. Again, issue oriented campaigns are most commonly campaigns without "personalities." Speakers and communicators are more typically concerned with what the audience regards as the issue rather than factors of party affiliation, age, race or socio-economic status.

It is also characteristic that the parapolitical organization operates on fewer dollars and without benefit of skilled campaigners except perhaps at the directorship level.

Direct legislation campaigns have power relationships just as does the political system. They have goals, patterns of organization, patterns of interaction, internal conflict and interesting strategies for goal achievement. Given the fact that grassroots politics are being investigated--campaigns do not necessarily obey rules. Restraints on resources, the structure of the organization, nature of the issue and the ability to identify and speak to the voter concerns are all factors confronted by the leadership. The actual techniques of communicating between parapolitical organizations and voter are rather traditional, placing emphasis on the grassroots nature of the campaign. Personal contact, direct mail, telephone canvassing, door-to-door canvassing, posters, flyers, and heavy reliance on community organizations and institutions are commonplace. Its worthy to note again, that the nature of the issue in large measure dictates the "vested interests" and in turn, those who take active leadership roles, serve as spokesman or participate actively in the campaign. The aforementioned is not meant to de-emphasize the value of the traditional media in such campaigns, rather only to underscore the emphasis placed on direct contact techniques.

Given the distinctive nature of the direct legislation campaign--how might they be studied? I would offer the following seven questions as points of departure:

1) What is the historical, social and cultural history and context for the issue?
2) Who were the respective proponents and opponents? What is membership of these organizations? Their structure? Financial means of support? Motives?

3) What strategies did the proponents and opponents employ?
4) What types of communications/persuasion were used?
5) What types of communication channels, formal and informal, public and private, were employed?
6) What were the arguments and means of proof employed?
7) What were the factors accountable for the success/defeat of the issue?

There are obviously a dozen other questions which might also be asked. One certainly could apply Burke's methodology if they wished. One also could list any of a number of hypotheses--perhaps some which research has answered regarding candidate campaigns could be applied to direct legislation measures. Comparisons of urban-rural techniques, strategies, and results might be explored as well as comparison of similar issues from one state to another.

Conclusion

In sum, I have attempted to treat direct legislation in such a fashion as to create both an understanding and a respect for it as laboratory for political communications research. Direct legislation campaigns are segments in the pattern of political development of our country and have been long neglected by our discipline.

TABLE I

PROVISIONS FOR DIRECT LEGISLATION IN THE STATES

	REFERENDUM	INITIATIVE		
STATE	BASIS	YES	NO	TYPE
Alaska	Petition of people	X		D
Arizona	Petition of people Submitted by legislature	X		D
Arkansas	Petition of people	X		D
California	Petition of people	X		D
Colorado	Petition of people	X		D
Connecticut	Submitted by legislature		X	
Florida	Constitutional requirement		X	
Georgia	Submitted by legislature Constitutional requirement		X	
Idaho	Petition of people	X		D
Illinois	Submitted by legislature			
Iowa	Constitutional requirement			
Kansas	Constitutional requirement			
Kentucky	Petition of people Constitutional requirement			
Maine	Petition of people Submitted by legislature Constitutional requirement	X		I
Maryland	Petition of people Submitted by legislature		X	
Massachusetts	Petition of people	X		I
Michigan	Petition of people Submitted by legislature Constitutional requirement	X		B
Missouri	Petition of people Submitted by legislature	X		D
Montana	Petition of people Submitted by legislature	X		D

Nebraska	Petition of people	X		D
Nevada	Petition of people	X		B
New Jersey	Petition of people Constitutional requirement		X	
New Mexico	Petition of people Constitutional requirement		X	
New York	Constitutional requirement		X	
North Carolina	Submitted by legislature Constitutional requirement		X	
North Dakota	Petition of people	X		D
Ohio	Petition of people Constitutional requirement	X		B
Oklahoma	Petition of people Submitted by legislature Constitutional requirement	X		D
Oregon	Petition of people Submitted by legislature	X		D
Pennsylvania	Constitutional requirement		X	
Rhode Island	Constitutional requirement		X	
South Dakota	Petition of people	X		B
Utah	Petition of people	X		B
Virginia	Submitted by legislature		X	
Washington	Petition of people Submitted by legislature Constitutional requirement	X		B
Wisconsin	Submitted by legislature Constitutional requirement		X	
Wyoming	Petition of people Constitutional requirement	X		I

D Direct
I Indirect
B Both

Table based on data from: The Book of the States 1982-83 (Council of State Governments, 1983), 65-67.

TABLE II

STATES PROVIDING FOR DIRECT LEGISLATION BY REGION

Region	States	Initiative Only	Referendum Only	Both
Eastern				
	Connecticut		X	
	Maine			X
	Maryland		X	
	New Jersey		X	
	New York		X	
	Pennsylvania		X	
	Rhode Island		X	
Southern				
	Arkansas			X
	Florida		X	
	Georgia		X	
	Kentucky		X	
	North Carolina		X	
	Virginia		X	
Midwestern				
	Illinois		X	
	Iowa		X	
	Michigan			X
	Missouri			X
	Ohio			X
	Wisconsin		X	
Plains				
	Kansas		X	
	Nebraska			X
	North Dakota			X
	Oklahoma			X
	South Dakota			X
Western				
	Alaska			X
	Arizona			X
	California			X
	Colorado			X
	Idaho			X
	New Mexico		X	
	Montana			X
	Nevada			X
	Oregon			X
	Utah			X
	Washington			X
	Wyoming		X	

TABLE BASED ON DATA FROM: The Book of the States 1982-83 (Council of State Governments, 1983), 65-67.

Endnotes

[1]Dan D. Nimmo and Keith R. Sanders (Ed.), Handbook of Political Communication (Beverly Hills: Sage Publications, 1981).

[2]For excellent history of the initiative and referendum, see Ellis Paxson Oberholtzer, The Referendum in America (New York: Scribners Sons, 1912); Edwin Bacon and Morrill Wyman, Direct Legislation and Lawmaking By Popular Vote, (New York: Houghton Mifflin, 1912) and David Butter and Austin Ranney (Ed), Referendums: A Comparative Study of Practice and Theory (Washington D.C.; American Enterprise Institute, 1980).

[3]Matt Shermer, Sense of the People (New York: American Referendum Association, 1969), vii.

[4]Ibid.

[5]Unpublished survey conducted by Jon Hall in 1978 on state activity in the area of direct legislation.

[6]Butter and Ranney, 77

[7]Butter and Ranney, 77

[8]"Referendum's Rising Importance," Time, November 17, 1980, 73.

[9]Ibid.

[10]"Grassley Suggests a Nationwide Initiative Be Developed," Waterloo Courier, July 2, 1978, 1.

[11]Heinz Eulan, The Behavioral Persuasion in Politics (New York: Random House, 1967), 3-4.

[12]Scott Greer and Peter Orleans, "Mass Society and Parapolitical Structure," American Sociological Review, XXVII (Oct. 1962), 634-646.